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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 15 (PKC)  
Remote Conference

5 VIRGIL GRIFFITH,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 February 23, 2021  
12:03 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 United States Attorney for the  
Southern District of New York

16 KYLE WIRSHBA

KIMBERLY RAVENER

17 Assistant United States Attorneys

18 WAYMAKER LLP

Attorneys for Defendant

19 BY: BRIAN EDWARD KLEIN

-and-

20 KOBRE & KIM LLP

21 BY: SEAN STEPHEN BUCKLEY

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(The Court and all parties appearing telephonically)

THE COURT: We'll go on the record.

This is United States of America against Virgil Griffith, 20 CR 15.

Appearing for the government, please?

MR. WIRSHBA: Good afternoon, your Honor. Kyle Wirshba and Kimberly Ravener, appearing for the government.

THE COURT: Good afternoon to you both.

And for the defendant?

MR. KLEIN: Good afternoon, your Honor. This is Brian Klein. I believe my colleague, Keri Axel, is also on, and Sean Buckley, from Kobre & Kim, is on the line. And Mr. Griffith is on the line from his parents' home in Tuscaloosa.

THE COURT: All right.

Ms. Axel, are you on the line?

You may have to unmute. I'm not hearing you.

Mr. Buckley, are you on the line?

MR. BUCKLEY: I am, your Honor. Good afternoon.

THE COURT: Good. Good afternoon.

And, Mr. Klein, is it all right if we participate without Ms. Axel, or would you prefer that we wait?

MR. KLEIN: Your Honor, we can proceed.

THE COURT: All right.

Mr. Griffith, good afternoon. Can you hear me?

THE DEFENDANT: Yes, I can hear you just fine. Thank

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1 you.

2 THE COURT: All right.

3 And, again, as with the prior conferences, this is  
4 being held telephonically. If you prefer, I could postpone  
5 this conference to a date where you and your counsel could  
6 appear in a courtroom with your counsel at your side.

7 Do you wish me to proceed today, or shall I adjourn  
8 this to a time when you can be in the courtroom with your  
9 counsel?

10 THE DEFENDANT: Please proceed, your Honor.

11 THE COURT: All right. I find the waiver is knowing  
12 and voluntary, and it's accepted.

13 So let me hear from the government as to what's  
14 transpired in these negotiations and where we are.

15 MR. WIRSHBA: Yes, your Honor.

16 The parties have continued to negotiate in good faith,  
17 and despite our best efforts, we, unfortunately, have not come  
18 to a resolution on a proposed stipulation for the Court. I am  
19 happy to go through the points that I believe remain in  
20 contention or proceed however the Court would prefer.

21 THE COURT: Well, listen, I understand it's  
22 negotiation in good faith, but where there's a will, there's a  
23 way.

24 Is there anything I can do to bring the parties  
25 together, or have you explored all your options and there's no

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1 point in further discussion?

2 MR. WIRSHBA: Your Honor, I believe that the parties  
3 have come to an impasse, and there are certain issues that the  
4 parties are just not in agreement on with respect to the  
5 Court's proposed stipulation suggested at the last conference.  
6 I think that if the Court would be so inclined, I think the  
7 government would appreciate either explaining its position to  
8 the Court or possibly putting in a letter to the Court  
9 describing its position.

10 THE COURT: Explain your position.

11 MR. WIRSHBA: Of course, your Honor.

12 So, the government is largely comfortable with the  
13 Court's proposed stipulation as suggested at the last  
14 conference. There is one point of clarification that I think  
15 the government believes that it needs in order to sign on to  
16 that stipulation, and that's because the Court suggested adding  
17 not only argument -- limiting the government's argument, but  
18 also limiting the evidence that the government could put on.  
19 What the government wants to clarify is -- I'm sorry, what was  
20 that?

21 THE COURT: No, I said correct.

22 MR. WIRSHBA: Oh, okay.

23 And what the government wants to clarify is that that  
24 stipulation will not prevent the government from putting on  
25 evidence such as the defendant's statements or coconspirator

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1 statements that might arguably incidentally touch on the issue  
2 of the stipulation. So, for example, while in the DPRK, Virgil  
3 Griffith told a colleague, and I am quoting here, "They're  
4 curious about this blockchain thing. The tech here is weak.  
5 They seemingly know nothing."

6 During his presentation in the DPRK, Griffith said:  
7 "This new technology, like, no one knows how to do all this  
8 right yet, but we definitely think this will be really useful  
9 to the DPRK and that's why we're here, and if the DPRK adopts  
10 it, they will be on the very leading-edge of this technology."

11 So, your Honor, those are examples of statements of  
12 the defendant that the government would seek to introduce at  
13 trial. And those statements could arguably -- if the  
14 government chose to do so, could be argued to the jury that  
15 there are inferences that should be made from those statements  
16 about the entire DPRK's cryptocurrency capabilities. Now, the  
17 government has already agreed not to make those arguments, not  
18 to argue to the jury anything about whether or not the  
19 government, as a whole, of the DPRK had these cryptocurrency  
20 capabilities. The government has agreed not to argue that.  
21 But, nonetheless, the government still believes that it would  
22 be appropriate to offer these statements at trial. And so the  
23 government suggested to the defense some kind of limitation on  
24 the stipulation, as proposed by the Court, that it should not  
25 preclude the introduction of any statement by the defendant, or

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1 his alleged coconspirators, or witness testimony regarding the  
2 events of the conference or the conference attendees.

3 And, your Honor, the reason that this is important is  
4 because, in the government's view, the government shouldn't be  
5 constrained from offering the statements of the defendant and  
6 the issue that we're talking about here, which is whether or  
7 not the DPRK government as a whole had knowledge or  
8 capabilities in the cryptocurrency technologies that Griffith  
9 was describing. That is just irrelevant to this case. What is  
10 relevant is the people that Griffith interacted with and their  
11 knowledge and capabilities, and anyone that he intended to  
12 provide services to, and their knowledge and capabilities, and  
13 Griffith's intent with respect to those things.

14 So, your Honor, the government would seek in limine,  
15 later on in this case, to limit any evidence about the DPRK's  
16 general cryptocurrency capabilities and believe that that issue  
17 is just not properly before the Court at this point, but that  
18 the Court should, when it comes to in limine practice, limit  
19 either party from making any arguments about irrelevant DPRK  
20 government employees and what their cryptocurrency capabilities  
21 were or what their knowledge of cryptocurrency or other  
22 blockchain concepts were.

23 Your Honor, to the extent that there are limitations  
24 on the inferences that should be drawn by the jury, those are  
25 best handled through the parties' requests to charge and the

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1 practice that comes from that.

2 So, your Honor, the purpose of this stipulation, as  
3 the government understood it, was to take something off the  
4 table. It was to ensure that something that the defense was  
5 worried about, which is that the government was going to make  
6 arguments about the DPRK's cryptocurrency capabilities as a  
7 whole doesn't happen. And the government has already offered  
8 to take that off the table by affirming that the government  
9 will not make arguments about that topic, and the government's  
10 also willing to accept the stipulation that was proposed by the  
11 Court about evidence and arguments. The government just wants  
12 to make sure that that stipulation does not constrain its  
13 evidence that should be permissibly admitted at the trial,  
14 including Griffith's statements and coconspirator statements  
15 that might arguably touch on this issue, even though the  
16 government is not going to be arguing those things.

17 THE COURT: Now, have you identified for the defendant  
18 what the coconspirator statements are?

19 MR. WIRSHBA: We have not identified all of the  
20 coconspirator statements. They're, of course, included in the  
21 discovery, to the extent that we currently possess them. And  
22 as the Court knows, we have also been producing early 3500  
23 material for certain of our witnesses that contain statements,  
24 but the government has highlighted for the defense several  
25 specific instances of these statements, statements from the

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1 defendant, statements from Chris Emms, both in our negotiations  
2 with the defense and also in the government's papers as part of  
3 its motion practice.

4 THE COURT: All right.

5 Let me hear from the defendant.

6 MR. KLEIN: Good afternoon, your Honor. This is Brian  
7 Klein.

8 We did meet and confer last week, on Thursday, and we  
9 spent quite a bit of time talking with Mr. Wirshba and  
10 Ms. Ravener. And after that, we actually sent a proposal to  
11 them, which they didn't respond to. So, we understand, as  
12 Mr. Wirshba said, those are their concerns. We don't think  
13 those address our concerns and the purpose of our motion.

14 So we did submit a proposal that we think addresses  
15 their concerns that they want to put in evidence that at least  
16 certain individuals at the conference gained new information.  
17 So we were agreeable to a stipulation like the one you proposed  
18 with a caveat like that at the end. We sent them a variation  
19 of the stipulation we had discussed with you at the last  
20 conference. It was a little different, but along the same  
21 lines, but with a caveat at the end that they may present  
22 evidence that certain individuals at the conference gained  
23 information new to them.

24 So I think we are at an impasse, your Honor. I think  
25 Mr. Wirshba's presentation of what they intend to offer into



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1 evidence -- and they haven't told us all they intend to offer,  
2 they've highlighted some, as Mr. Wirshba indicated, but our  
3 concern is that what's going to happen here at trial, your  
4 Honor, is they're going to put in evidence that people learned  
5 new things at the conference, that a number of those people at  
6 the conference were government employees, and that it's going  
7 to hang out there that, therefore, the government of the DPRK  
8 was learning new things when we have a very good-faith belief  
9 that that's not true, that the regime has an extensive,  
10 preexisting knowledge and capabilities, which is why we filed  
11 our motion, and, in fact, there was a recent indictment that  
12 came down after our last conference, between our last  
13 conference and today, that highlights that fact even. It was  
14 based out of the Central District of California charging a  
15 number of North Koreans with very sophisticated cyber and  
16 cryptocurrency-related crimes.

17 So I think it's unfortunate we were not able to reach  
18 an agreement, but that's where we are, your Honor.

19 THE COURT: Right, right, right.

20 Do you happen to have the language that you tendered  
21 to the government?

22 MR. KLEIN: Yes, your Honor, I do.

23 THE COURT: Yes. Could you read that for me, please?

24 MR. KLEIN: Yes, your Honor.

25 MR. WIRSHBA: Your Honor, just very briefly, and I'm

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1 so sorry to interrupt, the government received a proposal prior  
2 to our last discussion with the defense, but we were waiting  
3 for one to come after, and we never received it. And if we  
4 missed it, I apologize, but neither me or Ms. Ravener have  
5 reviewed this, but we're happy to listen and discuss in  
6 realtime.

7 THE COURT: That's really distressing to me as a  
8 judge, given the fact that we put off substantive discussion  
9 last week because you all needed more time to discuss a  
10 stipulation, which is about six, eight, ten lines of text, and  
11 now I'm finding out that you're hearing this for the first  
12 time. I don't know how this could be, but let me hear from the  
13 defendant.

14 MR. KLEIN: Your Honor, I'm not sure. I will tell you  
15 we emailed it to them Thursday after we spoke --

16 THE COURT: Who is "to them"?

17 MR. KLEIN: Sorry. To Mr. Wirshba -- sorry. We had a  
18 meet-and-confer on Thursday. Afterwards, I emailed it to  
19 Mr. Wirshba and Ms. Ravener. On Saturday -- I think it was  
20 Saturday -- I received an email from Ms. Ravener asking us for a  
21 stipulation or a proposal, which I resent to them. I  
22 understand Mr. Buckley received my email, and he's not at my  
23 law firm.

24 THE COURT: Whoa, whoa, whoa, whoa.

25 So, is this the Saturday email, or is this something

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1 prior to Saturday? What are we talking about, Mr. Klein?

2 MR. KLEIN: On Thursday of last week, we had a long  
3 conversation with the government.

4 THE COURT: Got that.

5 MR. KLEIN: We agreed afterwards to send them our  
6 proposal in writing, which I did do by email. I received an  
7 email from Ms. Ravener on Saturday --

8 THE COURT: What date was that email?

9 MR. KLEIN: The date was Thursday, so let me just pull  
10 it up, your Honor.

11 It was February 18th, your Honor.

12 THE COURT: Okay, February 18th. And that was sent to  
13 whom?

14 MR. KLEIN: Ms. Ravener and Mr. Wirshba.

15 THE COURT: Okay. Now, Mr. Wirshba, did the  
16 government receive that?

17 MR. WIRSHBA: Your Honor, because I am not in person,  
18 I am looking at my email right now, and I don't see that. And  
19 I'm being told by Ms. Ravener that she also does not see that.

20 THE COURT: All right. So there's a February 18th  
21 email, which you say you didn't receive, and then I know that  
22 we're leading up to something happening on Saturday, but go  
23 ahead and tell me, Mr. Klein. You heard from Ms. Ravener in  
24 response to the February 18th email, is that what you're  
25 telling me?

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1 MR. KLEIN: No, your Honor. Actually, it was Sunday,  
2 now that I've pulled up my email. It wasn't Saturday, it was  
3 Sunday. Ms. Ravener wrote an email asking us to send along our  
4 alternative proposal. I responded --

5 THE COURT: Did that imply to you that she had not  
6 received the earlier email?

7 MR. KLEIN: It did, your Honor, and I wrote her back  
8 and said I'm resending -- just resent to you.

9 THE COURT: Okay. And so that was what date?

10 MR. KLEIN: Sunday.

11 THE COURT: What date is that, sir?

12 MR. KLEIN: Sorry. Sunday, February 21st.

13 THE COURT: Okay.

14 MR. KLEIN: And then on Monday, I also -- yesterday,  
15 your Honor, I followed up again --

16 THE COURT: Well, let's just pause.

17 MR. KLEIN: -- on the 22nd to check in.

18 THE COURT: Let's just pause on the 21st.

19 So, Mr. Wirshba, did the government receive the email  
20 of the 21st?

21 MR. WIRSHBA: No, your Honor. The last email that I  
22 have from Mr. Klein is February 17th confirming the time of our  
23 discussion.

24 THE COURT: And, Ms. Ravener, did you receive either  
25 of these two emails?

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1 MS. RAVENER: No, your Honor. I'm reviewing my  
2 records as well to ensure we didn't accidentally overlook it,  
3 but I don't believe so, no. And that was the cause for me  
4 reaching out on Sunday, to convey that we had been expecting  
5 correspondence and that we hadn't received it.

6 THE COURT: All right.

7 This is beneath what a federal district court judge  
8 ought to be dealing with with grownups. Now, what I want you  
9 to do is take -- we'll reconvene at 1:00 o'clock.

10 Mr. Klein, get on the phone with the government and  
11 see whether you have the correct email address, whether you  
12 sent it by a reply, or whether there is some sort of an  
13 extraordinary event going on which prevents adults from  
14 communicating with each other on an important matter via email,  
15 something that most Americans are able to do without great  
16 difficulty.

17 MR. KLEIN: Yes, your Honor. We're surprised by this,  
18 too, your Honor. We were surprised they hadn't responded, and  
19 I did reply. So I'm not sure, but we will call them right away  
20 and try to figure out what happened here. Because Mr. Buckley  
21 did receive -- he's copied on it, and he's at a different law  
22 firm, and he did receive --

23 THE COURT: I understand that.

24 MR. KLEIN: -- the same email.

25 THE COURT: We're going to start at 1:00 o'clock, and

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1 somebody's going to tell me who shot John, what happened here,  
2 okay?

3 MR. KLEIN: Okay. Yes, your Honor.

4 THE COURT: We'll get to the bottom of it because it's  
5 unsettling.

6 Thank you very much. Speak to you at 1:00 o'clock.

7 MR. KLEIN: Yes, your Honor.

8 (Recess)

9 THE COURT: Good afternoon. This is the Judge. This  
10 is a continuation of the conference which began shortly after  
11 noon today.

12 So, who would like to go first in responding?

13 MR. WIRSHBA: Your Honor, this is Kyle Wirshba, for  
14 the government. I'm happy to explain the situation.

15 It appears that it is as we described to the Court,  
16 the parties sent each other emails; however, the emails from  
17 Mr. Klein and Ms. Axel did not reach the government. Both  
18 parties are going to reach out to their IT departments to try  
19 to determine why that is. The government has already done  
20 that. It seems that that problem persists. Even after we hung  
21 up, Mr. Klein's emails are not reaching the government, and I  
22 think I can speak for both parties when I say that we apologize  
23 for dragging the Court into this. I don't think either party  
24 was planning on raising this. The negotiations were in good  
25 faith, and we just both believe that we were at an impasse, and

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1 so that further negotiations were not necessary, and that's why  
2 neither party continued to engage with the other.

3 At this point, the government was able to receive an  
4 email from Mr. Buckley with the latest articulation of the  
5 stipulation, as suggested by the defense. That stipulation is  
6 similar to a previous one circulated by the defense, and it is,  
7 in fact, the case that the parties have reached an impasse, and  
8 these issues that we were planning to discuss with the Court  
9 remain there, despite these additional communications that the  
10 government had not got.

11 So, again, your Honor, we are working to fix the  
12 problem.

13 THE COURT: All right. So let me hear from Mr. Klein.  
14 Do you want to read your proposed language?

15 MR. KLEIN: Yes, your Honor. Just to be clear, we  
16 have also reached out to our IT department already to try to  
17 figure out the problem, too.

18 Your Honor, the proposal is: The government will not  
19 present argument or evidence that the information that  
20 Mr. Griffith allegedly provided and intended to provide at the  
21 cryptocurrency conference held in Pyongyang in April 2019 was  
22 beyond the then existing capabilities and knowledge of the  
23 government of the Democratic People's Republic of Korea, but  
24 may present evidence that certain individuals at the conference  
25 gained information new to them.

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1 THE COURT: Okay.

2 Let me hear from the government. What's wrong with  
3 that stipulation, proposed stipulation?

4 MR. WIRSHBA: Your Honor, the government --

5 THE COURT: What does that limit you from doing, other  
6 than making the argument to the jury that the government was  
7 unaware of information that Mr. Griffith was imparting?

8 MR. WIRSHBA: So, your Honor, I think there are two  
9 issues with that stipulation as the government sees it. The  
10 first is the one that I was articulating earlier, that it's the  
11 government's concern that that stipulation would preclude the  
12 government from offering evidence of Griffith's statements,  
13 including ones that they seem to know nothing, referencing the  
14 DPRK, or that --

15 THE COURT: Wait, let me stop you right there. When  
16 you say "they seemed to know nothing, referencing the DPRK,"  
17 what do you mean "referencing the DPRK"? Was that in  
18 Mr. Griffith's statement?

19 MR. WIRSHBA: So Griffith told a colleague -- while he  
20 was in the DPRK, he sent a message that said: They are curious  
21 about this blockchain thing. The tech here is weak. They  
22 seemingly know nothing.

23 In addition, there were other statements that Griffith  
24 made at the conference where he said things like no one knows  
25 how to do this or described the things that he was describing



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1 as new, and it's the government's concern that this stipulation  
2 could be read to preclude the government from offering evidence  
3 like that, not limiting itself to those particular statements,  
4 but statements like that.

5 THE COURT: Let me hear the defendant's stipulation  
6 one more time, please. Mr. Klein?

7 Mr. Klein, I'm not hearing you if you're speaking.

8 MR. KLEIN: Oh, sorry, your Honor.

9 The government will not present argument or evidence  
10 that the information that Mr. Griffith allegedly provided and  
11 intended to provide at the cryptocurrency conference held in  
12 Pyongyang in April 2019 was beyond the then existing  
13 capabilities and knowledge of the government of the Democratic  
14 People's Republic of Korea, but may present evidence that  
15 certain individuals at the conference gained information new to  
16 them.

17 THE COURT: All right.

18 Is it your position that entry into that stipulation  
19 would preclude the government from offering the statement that  
20 Mr. Wirshba just read?

21 Mr. Klein, can you hear me?

22 MR. KLEIN: Sorry, your Honor.

23 I think, your Honor, if they were going to put that  
24 in, I think they would need, at a minimum, some sort of  
25 instruction from your Honor – and I'm talking about the jury –

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1 letting them know that -- in some ways, paraphrasing the  
2 stipulation, so that the jury would understand that that  
3 alleged statement wasn't saying that the government in North  
4 Korea didn't have these capabilities.

5 THE COURT: Right. No, I understand your point. I  
6 understand your point. That sounds appropriate.

7 So, does that not solve the government's problem? So,  
8 in other words, the statement, for example, would not foreclose  
9 the government offering the statement that the government read,  
10 but the Court would remind the jury that there's a stipulation  
11 that the information defendant allegedly provided or intended  
12 to provide was not beyond the then existing capabilities of the  
13 government of the DPRK, but that it may have been beyond the  
14 capabilities and knowledge of at least certain persons  
15 attending the conference.

16 MR. WIRSHBA: So, your Honor -- oh, I apologize.

17 THE COURT: Is that appropriate for the Court to so  
18 instruct? Listen, the alternative here, the government should  
19 understand, is if there is no limitation whatsoever, then the  
20 defendant argues that it's entitled to know what the  
21 capabilities of the DPRK were, so that it can defend  
22 Mr. Griffith.

23 So it seems to me that we're not playing a game here --  
24 there are important issues at stake -- and if it's understood --  
25 there's a transcript of this conference here -- that you can

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1 offer the statement, but the Court would, quite appropriately,  
2 if asked by the defense, give a limiting instruction, so that  
3 the document was not misread or misconstrued.

4 MR. WIRSHBA: So, your Honor, the government certainly  
5 understands that there are important issues at stake. This is  
6 certainly an issue that is very important to the government,  
7 and we are trying to engage on that issue and be very precise,  
8 but we also want to make sure that we are being very careful  
9 with respect to what language we are agreeing to here.

10 THE COURT: I understand. Be very careful and answer  
11 my question: What's wrong with you being allowed to offer the  
12 statements which you quoted to me, that allegedly were made in  
13 text messages or communications by Mr. Griffith, and, if  
14 requested by the defense, at an appropriate juncture, I would  
15 remind the jury of the stipulation that the government is not  
16 arguing this is beyond the capabilities of the government of  
17 the DPRK, but they are arguing it's beyond the capabilities of  
18 at least certain people at the conference? So now be very  
19 precise and answer my question, and careful, okay, but answer  
20 my question.

21 MR. WIRSHBA: Yes, your Honor, of course.

22 I think there are two concerns. I think we'd be okay  
23 with the Court's language from the February 11th conference. I  
24 think the first concern --

25 THE COURT: You're not answering my question. You're

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1 talking about a February 11th conference. I didn't ask you  
2 that question, whether you'd be okay with the February 11th  
3 conference.

4 MR. WIRSHBA: Yes, your Honor.

5 THE COURT: If I want to find out whether you'd be  
6 okay with the language at the February 11th conference, I would  
7 have asked you that question. I asked you what, if anything,  
8 was your problem with what I just said. Do you want me to  
9 repeat it again? Do you want me to repeat it again, so that  
10 you're clear, and you want to be cautious, and all these  
11 things? Do you want me to repeat it again?

12 MR. WIRSHBA: No, your Honor. I think I have it. I  
13 think --

14 THE COURT: All right. So answer, please.

15 MR. WIRSHBA: So, we believe that the proposal should  
16 include not that -- that it's not beyond the DPRK's  
17 capabilities, but that it should be beyond any individual  
18 within the DPRK government's capabilities because we think that  
19 the opposite is overbroad and may lead the jury to have a  
20 misimpression about what it is that the government knows about  
21 the DPRK government as a whole's capabilities. The bottom line  
22 is that, here, the government doesn't know whether or not the  
23 government of the DPRK has the capabilities that we are talking  
24 about. And so if such an instruction to the jury reflected  
25 that the government is not arguing whether or not this

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1 information is within the capabilities or knowledge of  
2 individuals within the DPRK government, we believe that such an  
3 instruction would be appropriate.

4 THE COURT: Okay. So that's your only beef, you want  
5 back in the language at least certain individuals within the  
6 government of the DPRK? Is that your position?

7 MR. WIRSHBA: That's our position with that  
8 stipulation, yes, your Honor.

9 THE COURT: Thank you. All right.

10 So, let me kick it back to Mr. Klein. It seems we're  
11 very close here. The proposal is that the formulation be used  
12 beyond the then existing capabilities and knowledge of at least  
13 certain individuals within the government of the DPRK. Any  
14 problem with that?

15 MR. KLEIN: Yes, your Honor, we do have a problem with  
16 that. The problem with that, your Honor, is manifold, which  
17 is, one, that makes it sound like it could be two clerks in  
18 some distant office that don't have this knowledge or  
19 information, and when we look at the cases that have been  
20 brought by the Department of Justice and how they even discuss  
21 them, it's very clear that it was the regime that had the  
22 knowledge and capabilities we're discussing here. In fact,  
23 that's how the Deputy Attorney General discusses it in the  
24 recent press release.

25 And I think we don't want the jury to be confused that

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1 it's some low-level functionaries in the government who have  
2 this information, but not actually the people who could use it  
3 when the opposite, we understand, is true, your Honor, based on  
4 what we've seen, which is that the DPRK regime has a very  
5 sophisticated cryptocurrency capability and has deployed it,  
6 and it preexisted Mr. Griffith's trip.

7 THE COURT: All right. So what's the government's  
8 response, then? So why shouldn't I order the government to  
9 disclose who these individuals are within the government of the  
10 DPRK?

11 MR. WIRSHBA: Your Honor, you shouldn't order that  
12 because the individuals within the DPRK who Mr. Griffith never  
13 interacted with, never intended to provide services to, their  
14 knowledge of cryptocurrency capabilities is irrelevant to the  
15 case.

16 THE COURT: So I should allow you to do what Mr. Klein  
17 fears that you're going to do, which is say, you know, this  
18 just means it could be two clerks in a remote office?

19 MR. WIRSHBA: Absolutely not, your Honor, that is not  
20 what we are suggesting. And we have agreed not to make any  
21 arguments that would suggest what the capabilities are of the  
22 DPRK government as a whole. The government's objection is that  
23 the government, and in the discovery that we have provided and  
24 at the prosecution team's suggestion, we do not know what the  
25 capabilities of the DPRK government as a whole is, and that

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1 fact, what their capabilities are, is irrelevant to this case.

2 THE COURT: But tell me why you couldn't make the  
3 argument under this stipulation that all this stipulation says  
4 is that it's got to be at least two people, it can't be one,  
5 because there's the plural on the word "individuals," and so it  
6 could be two clerks in remote offices employed by the DPRK.  
7 Why isn't that fair argument under the stipulation? Why isn't  
8 that allowed under the stipulation?

9 MR. WIRSHBA: Because, your Honor, the government has  
10 agreed not to make arguments about the knowledge of the DPRK  
11 government as a whole, and your Honor would presumably find it  
12 irrelevant, and there could be a motion to strike if the  
13 government was making argument about which members of the DPRK  
14 government that have nothing to do with this case knew or did  
15 not know about cryptocurrency capabilities. And, in fact, the  
16 government is going to move in limine to prevent the defense  
17 from making those same arguments.

18 THE COURT: Well, with due respect, sir, it sounds to  
19 me a little bit of double talk on your part, because I heard  
20 you say that the government agrees that it's not going to  
21 present evidence or argument that this was beyond the  
22 capabilities of the DPRK, the government of the DPRK. I think  
23 I just heard you say that - we have a transcript of this, sir -  
24 and if that's the case, then you should be fine with the  
25 language that was proposed by the defense in that regard.

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1           Your position is, you want to put back in the "at  
2   least certain individuals" language, but you can't answer the  
3   question why that doesn't allow you to make the argument that  
4   the defendant fears, that this is two clerks in a remote office  
5   someplace. And you're comfortable --

6           MR. WIRSHBA: Your Honor --

7           THE COURT: -- that that was, your Honor, we agree  
8   that we're not going to argue it's beyond the capabilities of  
9   the government of the DPRK. And if that's your argument, then  
10   put it in the stipulation. If it's not your argument, then  
11   tell us who the certain individuals are.

12          MR. WIRSHBA: Your Honor, I don't mean to be  
13   difficult, and I apologize if I am not making myself clear.  
14   It's our view that without the individuals within the DPRK  
15   language, that it would not be accurate. And we are not aware  
16   of any individuals within the DPRK that did have this  
17   knowledge, but we are agreeing -- and I think this is what I  
18   said -- not to present any argument about any of those other  
19   people in the DPRK. The government's concern that it was  
20   articulating earlier with respect to Griffith's statements is  
21   that some of those statements, the evidence -- not the argument,  
22   but the evidence -- might incidentally impact on these issues  
23   even if the government does not make any argument that the  
24   defense fears, which is about the capabilities of people who  
25   are not a part of this case in the DPRK government.



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1 THE COURT: Okay. Let's turn to the motion to compel.  
2 Is there anything else anybody else wants to argue on the  
3 motion to compel?

4 MR. KLEIN: Your Honor, just if you wanted us to  
5 submit the press release I was talking about on the recent  
6 indictment, we would like to, just grant it, but we believe it  
7 further supports our argument and our motion to compel, your  
8 Honor.

9 THE COURT: That would be wonderful. Please do that.  
10 Anything else from the government?

11 MR. WIRSHBA: Yes, your Honor. The government would  
12 appreciate the opportunity to put in writing some of the  
13 information that it has learned through the negotiations.  
14 Through these negotiations, I think the government has a better  
15 understanding of the arguments with respect to this particular  
16 motion, and the government would welcome the opportunity to be  
17 able to put those in writing for the Court. We can do that as  
18 quickly as --

19 THE COURT: Why can't you do that right now. What  
20 have I not given you the opportunity to put in on this motion?  
21 You've had this motion for quite some time, I gave you plenty  
22 of opportunity to negotiate, and you don't seem to be able to  
23 come to an agreement, which I even understand, so I don't  
24 understand how the defendant can.

25 By the way, I suggest that you buy a copy of the

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1 transcript and read what you said to the Court today.

2 MR. WIRSHBA: I will certainly do that, your Honor.  
3 And if I misspoke or mischaracterized what I said, I apologize  
4 to the Court. I will certainly do that.

5 THE COURT: I think you just contradicted yourself.  
6 That's all.

7 MR. WIRSHBA: Well, your Honor, if I did that, I was  
8 certainly not being as clear as I would like to be with the  
9 Court, so I will certainly get a copy of the transcript.

10 What I'm suggesting, your Honor, is that there is some  
11 additional argument that we'd like to make in writing, if your  
12 Honor was amenable to that, that I think would be helpful to  
13 the Court with respect to the issues and --

14 THE COURT: What does the argument have to do with  
15 what you learned in negotiations with the defendant?

16 MR. WIRSHBA: Well, your Honor, I think in the  
17 negotiations with the defendant, it's become clear that what  
18 is, in part -- I think what is animating the defendant's  
19 arguments is this concern about the possible inference that  
20 your Honor was talking about combating through an instruction  
21 to the jury. And it's possible that an instruction to the  
22 jury, as opposed to this stipulation that limits the  
23 government's evidence and arguments, is something that would  
24 potentially appease all parties, and that we can describe and  
25 clarify more in writing. I think your Honor --

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1 THE COURT: I think time is up, pencils and papers  
2 down. Did you propose the instruction to defense counsel? No.

3 MR. WIRSHBA: We did not, your Honor. As you heard,  
4 we did not.

5 THE COURT: Yes.

6 So what is this? The negotiation fails, now you go to  
7 the fallback, you want to propose an instruction to them?  
8 Should we do that for two weeks now?

9 MR. WIRSHBA: No, your Honor. It seems that you were  
10 proposing an instruction on top of the stipulation, and so I  
11 think the government --

12 THE COURT: Sir, you've never tried a case before me.

13 MR. WIRSHBA: I have not.

14 THE COURT: Okay. Well, then you would learn, if  
15 there's a stipulation, I would feel extremely comfortable  
16 recalling that stipulation or prior instruction to the jury's  
17 attention when it's appropriate to do so. And I would not -- I  
18 don't know where you learned trial practice from, but I would  
19 not deem it that having given an instruction or read a  
20 stipulation once, that it's inappropriate to remind the jury of  
21 it throughout the trial.

22 MR. WIRSHBA: Of course not.

23 THE COURT: So, that's all I'm saying.

24 If counsel --

25 MR. WIRSHBA: Your Honor --

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1 THE COURT: If counsel said to me, your Honor, could  
2 you remind the jury of the stipulation the parties reached on  
3 this issue, I would say, absolutely, that sounds like a great  
4 idea, thank you for bringing that up, ladies and gentlemen of  
5 the jury...

6 MR. WIRSHBA: Understood, your Honor. I apologize, I  
7 didn't mean to suggest anything less would be appropriate.

8 I think it is the case that we have -- it seems,  
9 through today's conference, we have addressed one of the  
10 government's concerns here, which is that we were going to be  
11 prevented from putting on that evidence as opposed to having  
12 that evidence presented, and I'm happy --

13 THE COURT: But you could have discussed that with  
14 defense counsel over the last two weeks. I don't know where  
15 you learned how to negotiate. Now you want to negotiate over a  
16 jury instruction.

17 I'll tell you what, if you have any additional  
18 argument, get it in to me by the close of business tomorrow, on  
19 the motion to compel.

20 MR. WIRSHBA: Understood, your Honor.

21 MR. KLEIN: Your Honor?

22 THE COURT: Yes.

23 MR. KLEIN: Your Honor, we had planned just to submit  
24 the press release indictment without argument. We were trying  
25 to avoid additional argument.

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1 THE COURT: That's fine.

2 MR. KLEIN: I would oppose them being allowed to  
3 submit additional argument, but I just want to put that on the  
4 record.

5 THE COURT: Okay. It's on the record.

6 What else?

7 MR. WIRSHBA: Nothing further from the government,  
8 your Honor.

9 MR. KLEIN: Nothing from the defense.

10 THE COURT: Thank you, all, very much. Appreciate it.

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